



July 9, 2001

Mr. Charles M. Allen, II  
City of Richardson  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2001-2923

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149190.

The City of Richardson Police Department (the "department") received a request for all written, audio, and video information pertaining to case #01-030843. You provided the requestor with redacted copies of the arrest report which is associated with this case. You claim that the submitted information, consisting of written and audio information, is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We assume that you have provided the requestor with any related video information to the extent that it exists. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information it must release information as soon as possible under the circumstances to the extent that it exists). We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 provides:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103. You state that the "documents responsive to this request deal with a criminal case pending to be tried in the Richardson Municipal Court." Section 552.103 only applies where the litigation interest is vested in the governmental body claiming the exception to disclosure. *See* Open Records Decision Nos. 392 (1983), 588 at 1 (1991) (finding section 552.103 applicable where governmental body demonstrates that requested information relates to pending or reasonably anticipated litigation to which governmental body is a party). You do not indicate that the department or any employee of the department is a party to the criminal litigation in this case. Thus, you have not demonstrated that the department has a litigation interest in the submitted information. Accordingly, you may not withhold any of the submitted information from disclosure under section 552.103 of the Government Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.108(b)(2) of the Government Code. Section 552.108(b)(2) provides that "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if: . . . (2) the internal record or notation relates to law enforcement only in relation to an investigation that *did* not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(b)(2) (emphasis added). You state that the investigation into this case "has not resulted in conviction or deferred adjudication." However, you also state that the case is "pending to be tried in the Richardson Municipal Court." Thus, based on your conflicting statements, we cannot find that the case concluded in a final result other than conviction or deferred adjudication. Accordingly, you may not withhold the submitted information from disclosure under section 552.108(b)(2) of the Government Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. However, all of the section 552.130 information within the submitted information

pertains solely to the requestor. Therefore, we conclude that you may not withhold any of this information from disclosure pursuant to section 552.130 of the Government Code. *See* Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987). For the same reasons, you must also release the requestor's social security number.

You also claim that portions of the submitted information containing criminal history record information ("CHRI") are excepted from disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup> Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. *See* Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, you must not release to the requestor any CHRI to the extent that it exists within the submitted information pursuant to section 552.101 in conjunction with section 411.083 of the Government Code.

In summary, you must withhold from disclosure any CHRI contained within the submitted information pursuant to section 552.101 in conjunction with section 411.083 of the Government Code. You must release all other responsive information, including the submitted audiotape, to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

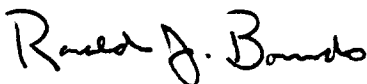
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 149190

Enc. Marked documents

c: Mr. Stacey Reese Smith  
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Sachse, Texas 75048  
(w/o enclosures)